U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF G-O-S-

DATE: JAN. 4, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, an environmental health and safety specialist and researcher, seeks classification as a member of the professions holding an advanced degree, and asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. *See* Section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). The Director, Texas Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

I. LAW

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
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> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
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> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree based on his Master's degree in Occupational and Environmental Hygiene from [redacted] The sole issue in contention is whether the Petitioner

has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Matter of New York State Department of Transportation, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (*NYSDOT*), set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must demonstrate that he or she seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that he or she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

While the national interest waiver hinges on prospective national benefit, a petitioner must demonstrate a past record justifies projections of future benefit to the national interest. *Id.* at 219. A petitioner's assurance that he or she will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The term "prospective" is included here to require future contributions by the petitioner, rather than to facilitate the entry of a foreign national with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

II. PERTINENT FACTS AND PROCEDURAL HISTORY

The Petitioner filed the Form I-140, Immigrant Petition for Alien Worker, on April 18, 2014, at which time he worked as an environmental health and safety specialist at and was also employed part time as a research assistant at In support of the Form I-140, the Petitioner provided evidence of his credentials, including training certificates, his membership in the his license as an asbestos inspector in West Virginia, and his certification in water damage restoration.

The Director issued a request for evidence (RFE) on September 8, 2014, requesting additional documentation to establish the Petitioner's eligibility under the analysis set forth in *NYSDOT*. The Petitioner was asked, in part, to confirm that his work "will impart national-level benefits," and to show that he has a past record of specific prior achievement with some degree of influence on the field as a whole.

In response, the Petitioner submitted additional documentation of his credentials and evidence of academic scholarships he received, including a 2004-2005 merit scholarship from

and a 2011-2012 scholarship for $2,500 from the He also provided four letters from supervisors and colleagues attesting to his expertise and the importance of his work. In a statement responding to the RFE, the Petitioner indicated that his research work has focused on improving "evidence-based healthcare and health risk assessment" across fields of environmental health including respiratory and toxicological research.

The Petitioner described one topic of his research as the investigation of the methodology and potential biases of animal toxicology studies, which are used to evaluate the safety of chemicals and drugs prior to clinical research on humans. He indicated that his "seminal work in this area was a cutting edge review of criteria for assessing the methodological and reporting quality of diverse types of studies relevant to toxicology and environmental health, including in vivo, in vitro, computational models, human and physical-chemical studies." The Petitioner submitted a letter from his supervisor on this project, director of the in the described the Petitioner as an "integral member" of the team carrying out the study, stating that he "worked tirelessly with my research team, identifying and retrieving toxicologically relevant studies based on pre-determined inclusion/exclusion criteria," and then "distilled key information from these studies and summarized this in a cogent and succinct way." He indicated that the aim of the project was to "facilitate the appraisal of studies related to human health and the environment," and that resulting manuscript will soon be submitted to the , an independent consultant in regulatory toxicology who has worked with the Petitioner, stated in a separate letter that the Petitioner's efforts for "will promote the use of evidence-based approaches to strengthen decision-making in safety sciences."

The Petitioner submitted a November 19, 2014, employment letter confirming his ongoing part-time employment for In his statement, he described his current research, in which he is "assessing the potential of . . . zebra-fish embryo testing as a predictor of development toxicity in small mammals such as rats and rabbits and the eventual clinical translation to humans." attested to the potential significance of this research, stating: "If the zebra fish is found as a good predictor, this could replace more expensive and laborious mammalian toxicity used for prediction of human health effects."

The Petitioner also discussed his work as a graduate student on a study examining "how exposures to environmental pollutants and allergens may relate to airway inflammation and respiratory illness in children with asthma living in the inner city of " conducted by the He stated that "[t]he project produced several presentations and publications by principal investigators . . . at national research meetings, publications and numerous citations by asthma researchers in the United States." His supervisor on this research, indicated that the Petitioner "worked extensively" with his research team, developing databases for environmental results and assisting in environmental sample preparation. attested to the need for "medical professionals with outstanding clinical, research, epidemiological and

environmental health credentials like [the Petitioner's]" and asserted that he is "making significant contributions impacting clinical research of asthma and other respiratory disorders."

Finally, the Petitioner described his work as an environmental health and safety specialist for where he conducted respiratory fit-testing and training of employees, conducted asbestos inspections and abatement, and was involved in developing safety programs. The Petitioner stated that the certifications, licenses, and training he received during his tenure with have given him "the expertise needed to enlighten individuals and ensure public safety." East Region Director of the , served as the Petitioner's mentor during his work for and indicated that he "works tirelessly to improve the health of all people in all industries." Each of the submitted letters, including also stated that the Petitioner's experience and training "distinctly position him to make remarkable contributions to healthcare in the United States."

The Director denied the Form I-140 on March 16, 2015, finding that the Petitioner had demonstrated the proposed work has substantial intrinsic merit and its benefits are national in scope, but that he had not established sufficient influence on his field to meet the third prong of the *NYSDOT* national interest analysis. On appeal, the Petitioner contends that the previously submitted evidence establishes his eligibility for the benefit sought. In addition, he submits a letter from , risk assessment and emergency response coordinator at who describes the Petitioner's credentials and expresses the belief that his "blend of experiences will always be needed." also states that the Petitioner's "contribution to the environmental, health and safety field . . . has the potential to reduce overall injury or death rates of workers in the United States."

III. ANALYSIS

As stated above, the analysis set forth in the third prong of *NYSDOT* requires a petitioner to demonstrate that he or she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. To do this, a petitioner must establish "a past history of demonstrable achievement with some degree of influence on the field as a whole." *NYSDOT,* 22 I&N Dec. at 219, n. 6.

While the Petitioner submitted letters verifying that he has worked on multiple research studies, the record does not include evidence demonstrating that any of these studies have had a degree of influence on the field as a whole. With regard to the project reviewing toxicology studies, and both made statements regarding its potential significance, but indicated that the results had not yet been published and no further documentation was submitted to demonstrate its actual influence. Similarly, attested to the potential impact of the Petitioner's testing of zebra fish embryos, but no evidence was submitted to demonstrate that his findings have in fact had such an impact. These statements about the prospective benefits of the Petitioner's projects do not establish that his work has already affected the field as a whole. Although the Petitioner asserted that the asthma study on which he collaborated resulted in heavily cited publications and presentations, no documentation was submitted show that

he was responsible for any such publications or presentations or to support his assertions regarding their influence. Statements made without supporting documentary evidence are of limited probative value and are not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

Regarding his work as an environmental health and safety specialist, the Petitioner does not assert, and the record does not indicate, that his work at resulted in increased occupational or environmental health and safety at a national level or otherwise had a degree of influence on the field as a whole. Rather, the submitted letters attest to the value of the Petitioner's expertise, and the demand in the field for individuals with his credentials. Such statements are not sufficient to establish eligibility for a national interest waiver because they relate to whether similarly-trained workers are available in the United States, an issue under the jurisdiction of the U.S. Department of Labor through the labor certification process. *See NYSDOT*, 22 I&N Dec. at 221. In addition, while the Petitioner submitted evidence of awards he has received in the form of academic scholarships, he did not demonstrate that those scholarships were awarded based on influence in his field. For these reasons, we find the record insufficient to establish that the Petitioner has had some degree of influence on the field as a whole.

IV. CONCLUSION

A plain reading of the statute indicates that it was not the intent of Congress that every advanced degree professional or individual of exceptional ability should be exempt from the requirement of a job offer based on national interest. In this instance, the Petitioner has not shown that his past record of achievement is at a level sufficient to waive the job offer requirement which, by law, normally attaches to the visa classification sought by the petitioner. While a petitioner need not demonstrate notoriety on the scale of national acclaim, the national interest waiver contemplates that his influence be national in scope. *NYSDOT*, 22 I&N Dec. at 217, n.3. More specifically, a petitioner "must clearly present a significant benefit to the field of endeavor." *Id.* at 218. *See also id.* at 219, n.6 (the individual must have "a past history of demonstrable achievement with some degree of influence on the field as a whole"). Considering the evidence submitted, the Petitioner has not established by a preponderance of the evidence that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of G-O-S-*, ID# 14872 (AAO Jan. 4, 2016)